IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3564 OF 1996

The Rubber Products Private Ltd. ..Petitioner
Vs.
Shri Pandharinath Pawar & anr. ..Respondents

WITH
WRIT PETITION NO. 349 OF 1998

Shri Pandharinath Pawar ..Petitioner
Vs.
The Rubber Products Private Ltd. ..Respondent

Mr. C.U. Singh, Senior Advocate with Mr. Neel Helekar and Mrs. Sanika Deshpande i/by M/s. Haresh Mehta and Co. for petitioner in W.P. No.3564/96 and for respondent in W.P. No. 349/98.

Ms. Meharaj A. Mulani with Ms.Anushka A. Shreshtha for respondent in W.P.No.3564/96 and for petitioner in W.P.No.349/98.

CORAM: B.H. MARLAPALLE, J.

Date : March 17, 2008.

ORAL JUDGMENT:

1. Both these petitions arise from the award Part-II passed by the learned Judge of the 3rd Labour Court at Thane thereby allowing partly Reference (IDA) No. 74 of 1981. The first petition has been filed by the employer-company, whereas the second petition has been filed by the workman who had approached the Labour Court by challenging the legality, propriety

and reasonableness of the order of dismissal dated 21/8/1980. The Labour Court directed the Company to reinstate the workman in service with continuity and pay him 50% of the backwages at the rate of the last drawn wages, Rs.15/- per day. While admitting the petition filed by the Company, the operation of the impugned award was stayed on the consideration that an amount of Rs.1,00,000/- towards the backwages was deposited. By the subsequent order dated 21/8/1998 the workman was allowed to withdraw Rs.50,000/- by furnishing security to the satisfaction of the Registrar and the remaining amount of Rs.50,000/- was directed to be paid to the workman without the requirement of any security and accordingly he has withdrawn an amount of Rs.50,000/-, whereas the remaining amount of Rs.50,000/- came to be invested in a fixed deposit. As per the Registry, with interest, the said amount invested has now come to Rs.1,03,709/-. At the threshold Mr. Singh the learned Senior Counsel had proposed to settle the dispute by allowing the workman to withdraw a further amount of Rs.75,000/- from the invested amount with interest accrued thereon. The respondent-workman is not agreeable and, therefore, the petitions are

required to be decided on merits.

2. In Writ Petition No. 349 of 1998 the petitioner-workman has prayed for a limited relief of full backwages instead of 50% backwages as directed by the Labour Court. When the Company's petition was admitted, the respondent-workamn was at liberty to file an application under Section 17-B of the Industrial Disputes Act, 1947, but such an application was never filed and the natural presumption would be that the workman was gainfully employed during the pendency of the petition. Even after he filed Writ Petition No.349 of 1998, he did not take steps to file an application under Section 17-B of the I.D.Act in the Company's petition. As per the Company, in normal course, the respondent-workman would have retired on 31/5/2002 on attaining the age of superannuation which is 60 years. Whereas, in his petition, the workman has stated in para 8 that when the impugned award was passed by the learned Judge of the Labour Court, the learned Judge overlooked the fact that the workman had already reached the age of superannuation and the award is dated 1/11/1995. However, Mr.Singh in all fairness conceded that the workman would have retired

on 31/5/2002 and not prior to 1/11/1995, as contended by the workman.

3. The respondent-workman was issued a show cause notice on 29/7/1980 and he was charged that on the earlier day i.e. 28/7/1980 he had refused to obey reasonable and lawful instructions of the Supervisor Mr.Jamaluddin to work on Table No.1 whereby Delivery Hoses were made. It appears that the workman along with Mr. Kamruddin were asked to go on Table No.2 to wrap the Delivery Hose Pipe and both of them refused to work on the said table saying, "Hum log table no.2 per kam nahin karenge". In reply Mr. Kamruddin pleaded guilty and tendered his unconditional apology and, therefore, he was let off by warning, whereas respondent-workman did not agree with the charges and the departmental enquiry was instituted. The Enquiry Officer submitted his report on 18/8/1980 and held him guilty. By accepting the said Enquiry Report, respondent-workman was dismissed from service as per the order dated 21/8/1980.

4. When his demand for reinstatement was under adjudication in Reference (IDA) No. 96 of 1981, by

the award Part-I, the Labour Court held that the enquiry conducted into the charges levelled against the workman was fair and proper and that the charges were duly proved against him in the said enquiry. In the Part - II award, the Labour Court framed the following two issues:-

(1) Whether the punishment of dismissal was by way of victimization for being a union activists?

(2) Is the punishment of dismissal imposed on the workman is shockingly disproportionate to the nature of proved misconduct?

5. On the first issue, the Labour Court held that the order of dismissal could not be called as and by way of victimization of the workman on account of his being a union activist. On the second issue, the Labour Court held against the employer and recorded a finding that the punishment of dismissal imposed on the workman is shockingly disproportionate to the nature of proved misconduct. In his petition, the workman claims that on the basis of the finding so

recorded by the Labour Court he ought to have been granted full backwages rather than half as has been directed in the impugned award. The learned counsel for the workman has relied upon the following decisions:-

(a) The Workmen of M/s. Firestone Tyre & Rubber Co. of India P. Ltd. vs. The Management and ors. [AIR 1972 SC 1227].

(b) Electronics Corporation of India vs. G. Muralidhar [2001 (10) SCC 43]

(c) Allahabad Jal Sanshtan vs. Daya Shankar Rai and anr. [AIR 2005 SC 2372].

(d) Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and ors. [AIR 2002 SC 643].

. She also relied upon the judgment of the High Court of Karnataka in the case of Mahajan Borewell Company, Bangalore vs. Rajaram Bhat and anr. [1998 I CLR 491].

6. No explanation has come forward as to why the workman did not move an application under Section 17-B of the I.D. Act during the last about 10 years or so and in the meanwhile he attained the age of superannuation on 31/5/2002. On the nature of charges proved against the workman, the Labour Court recorded its findings in the following words:-

> "....No doubt refusing to carry out the orders of the supervisors is a serious act of misconduct and if such undisciplined workman goes unpunished, the production of the company would be hampered and there would be indiscipline in the company but while considering the act of misconduct, it is necessary to look whether the gravity of misconduct should have a capital punishment..."

. As per the Labour Court, the order of dismissal was not justified and it was grossly disproportionate to the nature of charges despite the fact of the past service record which was far from

being satisfactory. The justification of the Labour Court in setting aside the order of dismissal appears in the impugned award in the following words:-

> "....Looking to the fact touching to the misconduct I feel that when one workman who had tendered apology was continued in the employment, the company could have continued the present workman in the employment by inflicting a lesser punishment rather than by dismissing him from service. It was possible for the company because the act of misconduct was not so serious. The production activities at the particular time of the incident was not found hampered totally due to refusal to work. In such circumstances, I am agreeing with the submissions of the learned representative of the workman come to the conclusion that the punishment was shockingly disproportionate. By dismissing the workman the company had practically caused his economical death when that was not for total refusal of work...."

7. This reasoning of the Labour Court suffers

from grave errors on two counts, namely, (a) the past record of service in as much as workman was the habitual case of flouting the orders of the superior and (b) the Labour Court itself while answering issue no.2 recorded a finding that refusing to carry out orders of the superior is a serious act of misconduct. So far as the past record of service is concerned, right from 1971 onwards he was either served with the charge-sheet and punished or the cases were closed down on his tendering an apology. On 23/11/1973 he was warned for disobeying the instructions of the superior. Similar warning was issued to him on 26/6/1975. He had again refused to carry out the work assigned to him by the superior on 23/10/1975 and was similarly charged by letter dated 2/2/1976. He was suspended for four days on account of the misconduct of willful insubordination. By letter dated 25/7/1979 he was charged again for similar act of misconduct and as he had tendered an apology the case was closed. It is thus evident that the respondent-workman was habituated in refusing to follow or obey the instructions given by the superior and at no point of time the instructions were unreasonable or unlawful. The learned counsel for the workman referred to the

scheme of Section 11-A of the I.D. Act and submits that the Labour Court has the power to substitute the punishment, to quash the punishment or to mould the punishment inflicted by the management and in the instant case the Labour Court has given appropriate reasons in that regard. These submissions cannot be accepted. The discretion under Section 11A is required to be invoked sparingly and only in cases where the punishment is so harsh as compared to the nature of charges proved that it shocks the conscience of a common man. Almost 10 years prior to the date of dismissal, the record shows that in every year there was at least one incident where he had refused to carry out the orders given by his superior. In short, he was habituated to disobey the orders of the superior. The reasons, therefore, set out by the Labour Court for substituting the order of dismissal or setting aside the same are far from being satisfactory and the workman's case could not be compared with his co-workman who had tendered an apology and was let off by the management. The workman's past record of service is far from being satisfactory and, therefore, in my considered opinion there was no case made out to set aside the order of

dismissal. It was permissible for the Labour Court in these obtaining circumstances to mould the relief without setting aside the order of dismissal and it certainly exceeded its jurisdiction in that regard.

8. As noted earlier, the workman has received an amount of Rs.50,000/- about 10 years back and admittedly his last drawn salary was Rs.15/- per day i.e. about Rs.390/- to Rs.450/- per month. The remaining service from the date of the award till the date of superannuation was about seven years, though the reference was pending for about 14 years. His yearly salary would come to about Rs.4800/- to Rs.5000/-. The remaining amount of Rs.50,000/- was invested and that is how it has become now Rs.1,03,709/-. Once the charges were proved, the past record of service was unsatisfactory and he was a case of habitual misconduct, in my considered opinion, it was not permissible for the Labour Court to set aside the order of dismissal and, therefore, the Labour Court committed grave error in interfering with the said order of punishment and though it could have moulded the relief rather than setting aside the order of dismissal. In the peculiar facts of this case,

ends of justice would be met, if the workman is allowed to withdraw the remaining amount of Rs.50,000/- with interest accrued thereon, which amount comes to a total of Rs.1,03,709/-.

9. In the premises, Writ Petition No.3564 of 1996 succeeds partly. The impugned award is hereby quashed and set aside and instead it is directed that the workman will be entitled to withdraw the amount of Rs.1,03,709/- over and above the amount of Rs.50,000/-, he has already withdrawn. Rule is made absolute in W.P.No.3564 of 1996 accordingly with no order as to costs. Writ Petition No. 349 of 1998 stands dismissed.

10. Mr. Singh the learned Senior Counsel makes an oral application to stay the withdrawal of the amount for a period of six weeks. Oral application is rejected.

(B.H. Marlapalle,J.)